



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE ENROLLED BILL ANALYSIS**

DRAFT

Date Amended:	Chapter 77	Bill No:	AB 1803
Tax:	Special Taxes	Author:	Assembly Budget Committee
Related Bills:	AB 1232 (J. Horton) AB 3076 (AR&T)		

This analysis will only address the bill's provisions that impact the Board.

BILL SUMMARY

This Budget trailer bill makes various statutory changes necessary to implement the Resources and Environmental Protection Budget. Several of this bill's provisions relate to the Board of Equalization (Board). Specifically, this bill:

1. Expands the imposition of the environmental fee on corporations to also include limited liability companies, limited partnerships, limited liability partnerships, general partnerships, and sole proprietorships. (*Health and Safety Code § 25205.6*)
2. Maintains the California tire fee at \$1.75 per tire until January 1, 2015. (*Public Resources Code § 42885*)

ANALYSIS

Environmental Fee

Health and Safety Code Section 25205.6

Law Prior to Amendment

Under existing law, Section 25205.6 of the Health and Safety Code requires the Department of Toxic Substances Control (DTSC) to provide to the Board a schedule of codes that consist of the types of corporations in industry groups that use, generate, store, or conduct activities in this state related to hazardous materials. Each corporation of a type identified in the schedule adopted by the DTSC is required to pay an annual fee to the Board.

The environmental fee is adjusted annually to reflect increases or decreases in the cost of living during the prior fiscal year, as measured by the California Consumer Price Index (CCPI). The fee rates for the 2006 calendar year are as follows:

Number of Employees	Annual Fee Rate
1 – 49	\$0
50 – 74	\$250
75 – 99	\$441
100 – 249	\$880
250 – 499	\$1,886
500 – 999	\$3,521
1,000 or more	\$11,952

The only corporations exempted from the fee are nonprofit corporations primarily engaged in the provision of residential social and personal care for children, the aged, and special categories of persons with some limits on their ability for self-care, as described in SIC Code 8361 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

The annual fee is paid to the Board and deposited into the state's Toxic Substances Control Account.

Amendment

This bill amends Section 25205.6 to require the DTSC to provide the Board with a schedule of codes that consists of the types of organizations that use, generate, store, or conduct activities in this state related to hazardous materials. Each organization of a type identified in the schedule adopted by the DTSC would pay an annual fee if that organization employs 50 or more employees in this state for more than 500 hours during the calendar year.

An "organization" includes a corporation, limited liability company, limited partnership, limited liability partnership, general partnership, or sole proprietorship.

This bill is effective July 18, 2006, as an urgency statute, but fee revenues are not permitted to increase in the 2006-07 fiscal year.

Background

In 1989, Senate Bill 475 (Ch. 269, Stats. 1989) added and Assembly Bill 41 (Ch. 1032, Stats. 1989) amended Section 25205.6 of the Health and Safety Code to require certain corporations involved in activities related to hazardous materials to pay an annual fee based on the number of employees employed in this state.

Senate Bill 1469 (Ch. 852, Stats. 1992) amended Section 25205.6 to revise the ranges for reporting the number of employees within corporations which use, generate, store, or conduct activities in this state related to hazardous materials for computing the environmental fee.

In enacting Senate Bill 1222 (Ch. 638, Stats. 1995), the Legislature required the Secretary for Environmental Protection to convene a task force to review the existing hazardous waste fee structure and provide recommendations to the Legislature no later

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than January 1, 1997. The task force was directed to propose a new fee system for providing financial support to California's hazardous waste and hazardous substance regulatory programs which would 1) provide protection for public health and safety and the environment; 2) provide adequate funding to ensure remediation of contaminated sites; 3) not impose a disproportionate burden on any sector of California's economy; 4) provide a level of funding that enables the DTSC to appropriately implement programs authorized by the Legislature in a manner consistent with the objectives of those programs; and 5) provide a means of funding consistent with the objectives of the DTSC's programs.

With respect to the environmental fee, the task force recommended that the fee be expanded to all business with 50 or more employees, that the rate ranges be adjusted to make per employee costs more equitable, and that a new rate category be established for businesses with 1,000 or more employees.

Senate Bill 660 (Ch. 870, Stats. 1997), the Environmental Cleanup and Reform Act of 1997, enacted many of the recommendations of the Fee Reform Task Force by amending various sections of the Health and Safety Code. That bill amended Section 20205.6 to flatten the environmental fee rate structure to make the fee more equitable by equalizing the average rate per employee paid by corporations in each range. Additionally, SB 660 established a new rate category for corporations with 1,000 or more employees, decreased the Generator Fee, repealed the Generator Surcharge and various hazardous waste fees, and changed several fees-for-services. For the most part, it was estimated that the revenue losses from the repealed fees, the changed fees-for-services, and the decreased Generator Fee would offset the resulting increase in the Environmental Fee.

COMMENTS

- 1. Purpose.** The amendments contained in this budget trailer bill are intended to address the erosion in the annual environmental fee base, which is occurring because fewer businesses are being classified as corporations and some corporations are reclassifying themselves as limited liability companies and other classifications.
- 2. The Board's contract with the DTSC would need to be renegotiated.** This bill proposes to expand the imposition of the environmental fee on corporations to include additional business organizations, commencing on July 18, 2006. In order to begin rewriting computer programs, notifying feepayers, revising publications, and answering inquiries from the public, the Board must renegotiate its contract with the DTSC to cover the Board's start-up costs that are not included in the 2006-07 contract.
- 3. "Organizations" defined.** This bill defines an "organization" to include a corporation, limited liability company, limited partnership, limited liability partnership, general partnership, or sole proprietorship. Staff notes that some organizations, such as trusts and joint ventures, would not be subject to the environmental fee even if they meet the 50-employee threshold.
- 4. The amendments shall not increase fee revenues in the 2006-07 fiscal year.** The environmental fee is due and payable to the Board on the last day of the second

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month following the end of the calendar year. As such, the environmental fee for the 2006 calendar year is due and payable to the Board on February 28, 2007.

Although this bill expands the imposition of the environmental fee to new entities for the 2006 calendar year, it also prevents the Board from collecting that fee from these entities until at least July 1, 2007. To comply with the requirement that the amendment is not permitted to increase fee revenues in the 2006-07 fiscal year, the environmental fee for the 2006 calendar year will not be collected from the new entities until February 29, 2008, along with the environmental fee for the 2007 calendar year.

According to DTSC staff, this measure was not intended to impose the 2006 calendar year fee upon the new entities, and they will be seeking clean-up legislation to clarify that intent. If the clean-up legislation is signed into law, the new entities would only be required to remit the 2007 calendar year fees on February 29, 2008.

This bill does not affect corporations, which were already subject to the environmental fee prior to this bill being signed into law.

- 5. The annual return requirements are not consistent with the imposition of the fee.** This bill expands the imposition of the environmental fee on corporations to also include limited liability companies, limited partnerships, limited liability partnerships, general partnerships, and sole proprietorships. However, existing law only requires every corporation subject to the environmental fee to file an annual return. To correct this inadvertent error, the following amendment to subdivision (b) of Section 43152.9 of the Revenue and Taxation Code is suggested:

43152.9. (b) Every corporation, limited liability company, limited partnership, limited liability partnership, general partnership, and sole proprietorship subject to the fee imposed pursuant to Section 25205.6 of the Health and Safety Code shall file an annual return in the form as prescribed by the board, which may include, but not be limited to, electronic media and pay the proper amount of fee due. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

- 6. Related Legislation.** This bill is almost identical to AB 1232 (J. Horton). That bill was gutted in the Senate.

AB 3076 (AR&T), as amended August 10, 2006, would make technical amendments to Section 43152.9 of the Revenue and Taxation Code regarding the reporting requirements for limited liability companies, limited partnerships, limited liability partnerships, general partnerships, and sole proprietorships.

COST ESTIMATE

This bill requires the Board, beginning July 18, 2006, to identify and register additional fee payers, develop computer programs, revise publications, mail and process additional returns and payments, carry out compliance and audit efforts to ensure proper reporting, develop regulations, train staff, and answer inquiries from the public.

The amendments made by this bill do not increase fee revenues in the 2006-07 fiscal year, therefore, although this bill is an urgency statute and is effective July 18, 2006, the

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first return and payment of the fee from such fee payers would be due to the Board on or before February 29, 2008 for the reporting period calendar year 2007. The Board will incur costs beginning in Fiscal Year 2006-07 and ongoing to implement and administer mandated provisions of this legislation. These costs are estimated to be \$89,000 for fiscal year 2006-07, \$520,000 for fiscal year 2007-08, and \$515,000 for fiscal year 2008-09, and each fiscal year thereafter.

REVENUE ESTIMATE

In fiscal year 2003-04 the environmental fee generated \$30.4 million in revenue. In the next fiscal year, 2004-05, there was an increase in revenue of almost 1% to \$30.7 million.

The following table depicts a breakdown of currently registered corporations and other organizations by the number of employees and the corresponding fee amount. The data includes corporations and sole proprietors, general partnerships, limited partnerships, and limited liability companies, that become subject to the fee by this bill. The DTSC confirmed that the data excluded government entities.

AB 1803: 2006 Revenue					
<i>Number of Employees</i>	<i>Corporations</i>	<i>Other Organizations</i>	<i>Total Organizations</i>	<i>Fee Due</i>	<i>Revenue</i>
50-74	9,078	1,810	10,888	250	\$2,722,000
75-99	4,779	864	5,643	441	\$2,488,563
100-249	8,072	1,421	9,493	880	\$8,353,840
250-499	2,368	441	2,809	1,886	\$5,297,774
500-999	1,181	190	1,371	3,521	\$4,827,291
1000+	896	133	1,029	11,952	\$12,298,608
Total	26,374	4,859	31,233		\$35,988,076

Revenue Summary

This bill would generate an estimated \$5.3 million increase in environmental fee revenue (\$36.0 million minus \$30.7 million).

California Tire Fee
Public Resources Code Sections 42885 and 42889

Law Prior to Amendment

Under existing law, Section 42885 of the Public Resources Code imposes a California tire fee, as of January 1, 2005, of one dollar and seventy-five cents (\$1.75) per tire on every person who purchases a new tire, as defined. As of January 1, 2007 the tire fee is reduced to one dollar and fifty cents (\$1.50) per tire and remains at that rate until January 1, 2015.

After deducting 1 ½ percent of the total fees as reimbursement for costs associated with the collection of the fee, a retailer must remit the fees to the Board for deposit in the California Tire Recycling Management Fund.

Under existing law, Section 42889 of the Public Resources Code requires the Board to transfer an amount equal to seventy-five cents (\$0.75) per tire on which the fee is imposed to the Air Pollution Control Fund. As of January 1, 2007 the Board is required to transfer an amount equal to fifty cents (\$0.50) per tire to the Air Pollution Control Fund, until January 1, 2015.

Assembly Bill 923 (Ch. 707, Stats. 2004) added Sections 42885 and 42889 to the Public Resources Code, to be operative January 1, 2015, restoring the rate and other provisions that were in effect prior to January 1, 2005. As such, Section 42885 will again impose a California tire fee of seventy-five cents (\$0.75) per tire. In addition, the percentage of the fee that a retailer may retain as reimbursement for costs associated with the collection of the fee will be restored to three percent (3%).

The Board administers and collects the California tire fee on behalf of the California Integrated Waste Management Board (CIWMB) in accordance with the Fee Collection Procedures Law.

Amendments

This bill amends Sections 42885 and 42889 of the Public Resources Code to maintain the California tire fee at one dollar and seventy-five cents (\$1.75) per tire, until January 1, 2015. The fee was scheduled to be reduced to \$1.50 per tire on and after January 1, 2007, with the Board transferring an amount equal to fifty cents (\$0.50) per tire on which the fee is imposed to the Air Pollution Control Fund. With the passage of this bill the rate remains at one dollar and seventy-five cents (\$1.75) per tire, and the Board will continue to transfer an amount equal to seventy-five cents (\$0.75) per tire on which the fee is imposed to the Air Pollution Control Fund until January 1, 2015.

This bill is effective July 18, 2006, as an urgency statute.

COMMENTS

- 1. Purpose.** This provision is intended to provide substantial and long-term funding sources for air pollution reduction incentive programs that will cut smog forming pollution and substantially lower children's exposure to toxic diesel particulate emissions.
- 2. This bill maintains the fee at the current rate.** Enactment of this measure does not materially affect the Board's administration of the California Tire Fee Law.

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COST ESTIMATE

As previously stated, this amendment maintains the existing fee rate level for an already existing program. There will be operating costs related to processing and reconciliation and verification of returns, issuing billings, and collection of the fees.

The Board would expect to continue to receive reimbursement for its expenses according to a contract with the CIWMB. The current contract is effective until the end of the 2006-07 fiscal year.

REVENUE ESTIMATE

Under existing law, the California tire fee is one dollar and seventy-five cents (\$1.75) per tire. The current tire fee rate was effective January 1, 2005; midway through the 2004-05 fiscal year the tire fee rate increased from one dollar (\$1.00) to one dollar and seventy-five cents (\$1.75).

According to the Board's Excise Taxes and Fees Division, the California tire fee generated revenues in the last three fiscal years as follows:

Fiscal Year	Revenue	Percentage Increase in Revenue from Prior Fiscal Year
2002-03	\$31.9 million	
2003-04	\$33.1 million	3.8 percent
2004-05	\$47.6 million	43.8 percent

Analysis prepared by:	Cindy Wilson	916-445-6036	08/17/06
	John Cortez	916-445-6662	
Revenue estimate by:	Ronil Dwarka	916-445-0840	
Contact:	Margaret S. Shedd	916-322-2376	
Is			1803-1cwjc

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